

Arizona Department of Commerce  
MOTION PICTURE PRODUCTION TAX INCENTIVES PROGRAM

Program Guidelines



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Motion Picture Production Tax Incentives Program  
Arizona Department of Commerce  
1700 W. Washington, Suite 600, Phoenix, AZ 85007

Questions regarding Motion Picture Production Tax Incentives can be directed to [motionpicture@azcommerce.com](mailto:motionpicture@azcommerce.com)

**Arizona Department of Commerce**  
**MOTION PICTURE PRODUCTION TAX INCENTIVES PROGRAM**

**Program Guidelines<sup>1</sup>**

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**Section 1. Overview**

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The Motion Picture Production Tax Incentives Program (A.R.S. §§41-1517 and 41-1517.01) was established by the Arizona legislature in 2005 to promote the motion picture industry in the state. The program is effective December 31, 2005 through December 31, 2010. Effective September 19, 2007, tax incentives are available for the production of motion pictures as well as the construction of infrastructure projects in Arizona.

**A. PRODUCTION INCENTIVES**

The program offers the following tax incentives to qualified companies that produce one or more motion pictures:

- Transaction privilege tax (TPT) exemption on:
  - ✓ machinery, equipment and other tangible personal property
  - ✓ job printing, engraving, embossing or copying
  - ✓ the lease or rental of lodging space
  - ✓ sales of catered food, drink and condiments
  - ✓ construction contracts for buildings or other structures
- Use tax exemption on machinery, equipment and other tangible personal property
- Income tax credits equal to 20% or 30% of the company's investment in qualifying production costs

A company seeking tax incentives under this program must obtain pre-approval (letter of qualification) from the Arizona Department of Commerce (Commerce) that is valid for a 24 month period. If the company's initial application is eligible, Commerce will issue pre-approval and will transmit a copy of the pre-approval to the Arizona Department of Revenue (Revenue). Concurrent with submittal of an initial application to Commerce, a company may request a letter of good standing from Revenue by submitting a "Tax Clearance Application" form to Revenue. Requesting tax clearance at this time will expedite Revenue's approval for an exemption certificate. If Revenue establishes the company's eligibility under its statutes, Revenue will issue a certificate for transaction privilege tax and use tax exemptions and a Certificate of Good Standing. Once the company has the exemption certificate, TPT and use tax exemptions can be taken. A production company must provide documentation to Commerce that the production listed in the initial application has begun within 90 days of pre-approval to maintain eligibility. When the production proposed in the initial application is finished, the company must submit a Completion Report to Commerce. Commerce may issue post-approval to a company after verification that eligibility requirements have been met by the company during the production of the qualified motion picture. Once post-approval is received, a company may claim the tax credits and retain TPT and use tax exemptions.

**B. INFRASTRUCTURE TAX CREDITS**

The program also provides a tax credit of up to 15% of the base investment amount to a person or qualified company who constructs an infrastructure project.

A person or qualified company seeking tax credits under this program must obtain pre-approval (letter of qualification) from Commerce. The pre-approval is valid until completion of the infrastructure project. If the initial application is eligible, Commerce will issue pre-approval and will transmit a copy of the pre-approval to Revenue. The applicant must provide documentation to Commerce that it has spent at least \$250,000 on the project within 90 days of pre-approval to maintain eligibility. Depending on the type of infrastructure project, the applicant must also demonstrate it has spent up to \$5 million on the project within 36 months of pre-approval. When the proposed infrastructure project is completed, the applicant must submit a Completion Report to Commerce. Commerce may issue post-approval to an applicant after verification that eligibility requirements have been met by the applicant during construction of the qualified infrastructure project. Once post-approval is received, an applicant may claim the tax credits.

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<sup>1</sup> These Guidelines are provided to assist applicants. In case of conflict between what is presented here and the Arizona Revised Statutes, the statutes and the Arizona Administrative Code shall prevail. See A.R.S §§ 41-1517, 41-1517.01, 42-5009, 43-1075, 43-1075.01, 43-1163 and 43-1163.01.

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## Section 2. Definitions of Program Terms

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For purposes of applying for and maintaining eligibility for the Motion Picture Production Tax Incentive Program, the following terms are either defined by Commerce, defined in A.R.S. §§41-1517 and 41-1517.01 or are statutory definitions modified by Commerce. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this program:

1. "Base investment" means the budget for the infrastructure project.
2. "Begin production" means a production company is able, within ninety days of the pre-approval date, to provide documentation to Commerce of either:
  - a. Its Arizona expenditure of the lesser of:
    - i. Ten percent of the estimated total Arizona budget of the production.
    - ii. Two hundred fifty thousand dollars.
  - b. A completion bond, equal to the estimated total budget of the pre-approved production.In addition, the production company must provide written notice to Commerce along with one of the following:
  - c. A copy of a contract, loan out agreement or deal memo with a cameraman and crew.
  - d. A copy of the crew call sheet for the first day of production.
  - e. Evidence that residents of this state have been paid a total of at least five thousand dollars for work on the pre-approved motion picture.
  - f. A copy of a contract or agreement directly attributable to the pre-approved motion picture.
3. "Begin construction" means a individual or qualified company is able, within ninety days of the pre-approval, to provide documentation to Commerce of either:
  - a. Its Arizona expenditure of the lesser of:
    - i) Ten percent of the estimated total base investment amount.
    - ii) Two hundred fifty thousand dollars.
  - b. A surety bond, equal to the estimated total base investment amount of the project.
4. "Business day" means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes a legal holiday.
5. "Calendar year cap" or "cap": means the tax credit amount prescribed by A.R.S. §41-1517(J) for allocation in a specific calendar year.
6. "Commercial advertisement" means an advertising message designed for delivery through either:
  - a. A motion picture film or video medium to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event or cause.
  - b. Still photography that is used in national or international print media to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event or cause.
7. "Company" means the same as "motion picture production company."
8. "Completion" means the production meets all eligibility requirements under A.R.S. §41-1517 including: content restrictions, employment levels, inclusion of an Arizona acknowledgement and a viewable copy of the production or a letter of credit have been submitted to Commerce for review.
9. "Completion bond" means an executed written contract, issued by an insurance company with an insurance industry rating of b+ or better by A.M. Best Company guarantying to the financiers of the project that it will be completed according to the terms of the pre-approved application submitted by the production company in its application.
10. "Costs incurred in Arizona" means an expense paid by the qualified company or its delegate to a retailer, lessor or contractor who has a physical office located within the boundaries of the state of Arizona.
11. "Date of receipt" means the day the initial application is **delivered to and accepted by** Commerce via United States Postal Service, private delivery service or hand delivery. Postmarks will be disregarded when determining the date of receipt. Any other form of delivery for an initial application, including emailed or faxed copies will not be accepted by Commerce and will be returned.

12. "Delegate" means a person or entity to which the qualified company has assigned authority to incur expenses for the qualified company. It does not include a person or entity that passes out-of-state expenses through their bank accounts or operations in an attempt to convert them into in-state qualifying production costs.
13. "Full-time employee" means an individual who works an average of at least four hours a day (during his/her employment periods) on productions identified in the initial application throughout the pre-approval period and for whom a qualified company or its authorized payroll service company is required to remit federal or state withholding tax. For each pre-approval period the company must verify whether an individual meets the conditions to be a "full-time employee."
14. "Initial application" means either the Commerce form "Initial Application for Pre-Approval for a Motion Picture Production Company" or "Initial Application for Construction of an Infrastructure Project" and all required attachments to apply for tax incentives.
15. "Investment threshold" means qualifying production costs totaling at least \$250,000.
16. "Motion picture" means a single medium or multimedia program, including a commercial advertisement, music video or television series, that:
  - a. Is created by production activities conducted in whole or in part in Arizona.
  - b. Can be viewed or reproduced.
  - c. Is intended for commercial distribution or licensing in the delivery medium used.

Motion picture does not include any production featuring actual news, current events, weather, locally produced and locally broadcast television productions, financial market reports, concerts, internet broadcasts, talk shows and interviews, game shows, sporting events, award or other gala events, a production whose sole purpose is fundraising, a production used for corporate or organizational training or in-house corporate advertising or other similar production activities.
17. "Motion picture infrastructure project", "infrastructure project" or "project":
  - a. Means soundstages and support and augmentation facilities that are constructed in Arizona and primarily (more than 50%) used for motion picture production.
  - b. Does not include motion picture theaters and other commercial exhibition facilities.
18. "Motion picture production company" or "qualified company": means any person primarily engaged in the business of producing motion pictures and that has a physical business office and bank account in this state.
19. "Music video" means a filmed or videotaped rendition of a song or songs, portraying musicians performing the song or other visual images set to the lyrics of the song.
20. "Primarily engaged" means more than 50 percent of all business activity, measured by revenues or expenses, is in the business of producing motion pictures.
21. "Priority placement number" means the order in which the calendar year cap is allocated to persons or qualified companies. The order is established by either:
  - a. The date of receipt of a single application by Commerce, or
  - b. The number determined by lottery for each day multiple initial applications are received.
22. "Production" means the same as "motion picture."
23. "Qualifying production costs" means only costs incurred by the company or its delegate in Arizona after the date of pre-approval and prior to expiration of pre-approval and include:
  - a. Salaries and other compensation for talent, management and labor paid to residents of Arizona.
  - b. A story and scenario to be used for a motion picture.
  - c. Set construction and operations, wardrobe, props, accessories and related services in Arizona. Construction costs are limited to those paid to contractors licensed in Arizona under Title 32, Chapter 10.
  - d. Photography, sound synchronization, lighting and related costs.
  - e. Editing and related services.
  - f. Rental of facilities and equipment.
  - g. Catered food, drink and condiment.
  - h. Other direct in-state costs of producing the motion picture, pursuant to rules adopted by Commerce and Revenue that follow generally accepted accounting standards for the motion picture industry.
  - i. Payments for penalties and fines do not qualify as production costs.

- j. Expenses incurred before the pre-approval date do not qualify as production costs.
  - k. Costs incurred before the date of submission of a completed commercial advertisement and music video application do not qualify as production costs.
24. "Script" means the storyline, dialog, scenes and directions written for a motion picture.
  25. "Soundstage" means a permanent facility in Arizona of one or more sets or stages used primarily for staging and filming motion pictures and any land, permanent buildings or capital equipment that is in or adjacent to, and is necessary for the operation of, a soundstage.
  26. "Support and augmentation facilities" means permanent facilities in Arizona that are used to complement motion picture production needs and complement the motion picture production.
  27. "Substantially complete" means all questions in the initial application are fully addressed by the company and all documents required by Commerce are attached or can be supplied within 15 calendar days after receipt of notification by Commerce of any deficiencies.
  28. "Surety bond" means an executed written contract, issued by an insurance company with an insurance industry rating of b+ or better by A.M. Best Company guarantying to the financiers of the project that it will be completed according to the terms of the pre-approved application.
  29. "Synopsis" means a condensed written outline or summary of the motion picture.
  30. "Tax incentives" means the tax exemptions from transaction privilege and use taxes listed in A.R.S. §42-5009(H) and tax credits against Arizona tax liability provided under A.R.S. §§43-1075, 43-1075.01, 43-1163 and 43-1163.01.
  31. "Television series" means a group of productions created or adapted for television broadcast with a common series title, related to each other in subject or theme, which is produced seasonally for appearing at scheduled intervals, but subject to discretionary programming and scheduling decisions, and with or without a predetermined number of episodes. Television series includes a pilot production for the promotion or introduction of a television series.
  32. "Time of lease or rental" as used in Sections 8 and 14 of these Guidelines, means the period during which the lease or rental of the tangible personal property or lodging space for a consideration occurs. Due to the periodic nature of lease and rental transactions a motion picture production company must possess a letter of pre-approval from Commerce and a current Revenue issued exemption certificate throughout the lease or rental period in order to qualify for the transaction privilege tax exemption.
  33. "Time of sale or purchase" as used in Sections 8 and 14 of these Guidelines, means the date on which the transfer of title or possession, or both, of the tangible personal property, for a consideration occurs.

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### **Section 3. Tax Incentives Limitations**

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A. Commerce cannot pre-approve a total amount of tax credits that exceeds:

<u>Calendar Year</u>	<u>Maximum Tax Credit Amount*</u>
2006	\$30 million
2007	\$40 million
2008	\$50 million
2009	\$60 million
2010 and after	\$70 million

\* Beginning in 2008, the Arizona legislature has allocated \$180,000 of the cap per year to Commerce for the administration of the program.

The following restrictions also apply to the calendar year cap:

1. Beginning in 2008, five percent of the calendar year cap is reserved for use by qualified companies that produce commercial advertisements or music videos. The five percent set aside can only be used by commercial advertisement or music video production companies. Any tax credits returned to the 5% set aside due to ineligibility or voluntary relinquishment shall be reallocated to another commercial advertisement or music video production company that applied in the same year but is waiting in line for tax credits according to its priority placement number. Any unused portion of the 5% set aside may be allocated in the next calendar year to commercial advertisement or music video production companies.

<u>Calendar Year</u>	<u>5% Tax Credit Amount Reserved</u>
2008	\$2,500,000
2009	\$3,000,000
2010 and after	\$3,500,000

2. Persons or qualified companies that construct eligible infrastructure projects in Arizona can receive a tax credit allocation. The tax credit allocations are computed at fifteen percent of the base investment subject to the following limitations:
  - a. Beginning in 2008, the combined allocations for soundstage construction shall not exceed \$5 million tax credits in any year.
  - b. Beginning January 1, 2009, allocations made for support and augmentation facilities shall not exceed \$3 million tax credits per project.
    - i. If one or more soundstages are pre-approved in 2008, the combined allocations for construction of support and augmentation facilities shall not exceed \$7 million tax credits in 2009.
    - ii. If one or more soundstages are pre-approved in 2008 or 2009, the combined allocations for construction of support and augmentation facilities shall not exceed \$9 million tax credits in 2010.

- B. Commerce cannot pre-approve tax credits for an individual application for producing motion pictures that exceeds:

<u>Calendar Year</u>	<u>Tax Credit Maximum per Application</u>
2006	\$5 million
2007	\$5 million
2008	\$7 million
2009	\$8 million
2010 and after	\$9 million

- C. The commercial advertisement or music video production company is not eligible for an allocation of tax credits until the company's qualified production costs reach \$250,000 in twelve consecutive months from the date of pre-approval. Once the \$250,000 investment threshold has been met, the company can apply for post-approval and an allocation of tax credits no more than once a calendar month.
- D. Commerce shall not post-approve tax incentives to a production that is obscene, depicts sexual activity or sexually exploits a minor as provided under A.R.S. §§41-1517(M); 12-811; 13-3501; 13-3551; 13-3552; 13-3553.
- E. If a company files a completion report for an initial application, Commerce shall not pre-approve any additional tax credits for any of the productions in an initial application for which pre-approval was issued.
- F. There is no limitation on the amount of TPT and use tax exemptions available to a qualified company or motion picture. Nor is there a limit on the total amount of TPT and use tax exemptions available in any calendar year under this program. An Infrastructure project does not qualify for TPT and use tax exemptions.

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#### **Section 4. Calendar Year Cap Management**

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- A. Commerce shall pre-approve tax credits according to A.R.S. §41-1517(J). The date of pre-approval dictates the cap year from which the allocation is made. The total amount of credits pre-approved for a single application shall be applied against the calendar year cap in which pre-approval occurred. If a calendar year's cap is exhausted by October 31<sup>st</sup>, Commerce may accept applications, except for commercial advertisements or music videos, on or after November 1<sup>st</sup> for an allocation of tax credits from the next calendar year's cap. However, the pre-approval letter issued to the company will not be effective until the first business day of the next calendar year. Commerce shall allocate a 20% tax credit on qualified production costs up to \$1 million. If total qualified production costs for a pre-approved production exceed the \$1 million threshold, Commerce shall allocate a 30% tax credit.
- B. Five percent of each calendar year's cap is set aside for production of commercial advertisement or music video applicants.
- C. When initial application is made, if sufficient cap is not available the company may either:
  1. Accept any remaining allocation amount and any TPT and use tax exemptions, or

2. Proceed with pre-approval for the application knowing the production will not receive tax credits at this time and accept any TPT and use tax exemptions, or
  3. Irrevocably decline any remaining tax credit allocation amount for that calendar year and accept any TPT and use tax exemptions, or
  4. Withdraw the initial application and apply in the next year when sufficient cap may be available.
- D. "A company may voluntarily relinquish all or part of the pre-approved tax credit amount by submitting the Commerce form "Voluntary Relinquishment of Tax Credits." It is important to note, when a company relinquishes tax credits the company is voluntarily relinquishing any and all rights to the tax credits and is prohibited from claiming, using, carrying forward, selling or transferring the relinquished tax credits. However, the company may continue receiving transaction privilege and use tax exemptions, even though the company relinquished all or part of its tax credit allocation. To retain any transaction privilege and use tax exemptions the company must maintain eligibility and submit a completion report to Commerce. Failure to submit a completion report would constitute ineligibility and would make any TPT and use tax exemptions received since pre-approval subject to recapture of the incentive amounts plus interest and penalties as provided by A.R.S. §42-5009(H).
- E. Tax credits that were voluntarily relinquished or returned due to ineligibility shall be re-allocated to a person or qualified company with the next priority placement number. (A.R.S. §41-1517(H))
- F. In any year there is an unused tax credit amount Commerce shall allocate the balance to a person or qualified company that successfully appeals the denial of tax incentives under this program. If sufficient unused tax credit amount is not available from the current or previous years' caps to satisfy a successful appeal, Commerce shall allocate tax credits from the next calendar year's cap. (A.R.S. §41-1517(H))

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## **Section 5. Revocation of Qualification and Recapture of Incentives**

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- A. As provided by A.R.S. §41-1517(F), if a company fails to begin production and notify Commerce within ninety days of pre-approval by Commerce, the pre-approval lapses, the application is void, all transaction privilege and use tax exemptions will be recaptured and the pre-approved tax credits will be returned to the calendar year cap from which they came.
- B. As provided by A.R.S. §41-1517(Q), if a company fails to begin production and notify Commerce within ninety days of pre-approval and also fails to voluntarily relinquish tax credit amounts, the company and all persons signing the application are disqualified from receiving, or participating in any motion picture production company that applies for or receives, tax incentives under this program for three years after the original application.
- C. As provided by A.R.S. §41-1517 (K)(7) If a commercial advertisement or music video company fails to complete a production within 60 days of submitting the project to commerce for pre-approval, qualification for tax incentives will be revoked.
- D. A.R.S. §41-1517(V)(2) provides that a company must be primarily engaged in the business of producing motion pictures during the pre-approval period. If a qualified company doesn't meet the requirements as reported in the Completion Report, the company's qualification will be revoked. Commerce will notify Revenue to initiate revocation and recapture of incentives already received during the pre-approval period
- E. Failure by an infrastructure applicant to submit the Annual Report may result in the disqualification of a person or qualified company and all persons signing the infrastructure application. The disqualified person or qualified company may not receive future tax credit allocations under this program. (A.R.S. §41-1517.01(G))
- F. Pursuant to A.R.S. §41-1517.01(H) if Commerce or Revenue determines within sixty months of post-approval that a person that received an infrastructure tax credit failed to comply with any of the statutory requirements, all or part of the tax credits are subject to recapture. Revenue may require the applicant to:
1. File appropriate amended tax returns reflecting the recapture of the amount of the tax credit actually applied to reduce state income tax liability.
  2. Pay a penalty of four and one-half percent of the amount of the applied credit per month elapsing from the date the penalty is assessed until it is paid. The total penalty shall not exceed twenty-five percent of the full amount of the credit.
- G. Under A.R.S. §§42-5009, 43-1075, 43-1075.01, 43-1163 and 43-1163.01, Revenue may terminate a company's eligibility if it obtains information indicating failure of the company to qualify for incentives and compliance with program requirements. Revenue may require the taxpayer to file appropriate amended tax returns reflecting the recapture of the tax incentives.

- If qualification is terminated or revoked, all or part of the tax credits received under this program are subject to recapture under A.R.S. §§43-1075(H) and 43-1163(H). The transferee (purchaser) of the tax credit has recourse only against the transferor (seller), not the State of Arizona.
- If qualification is terminated or revoked, all or part of the TPT and use tax exemptions received under this program are subject to recapture under A.R.S. §42-5009(H).

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## **Section 6. Limited Managed Audits**

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After receiving post-approval from Commerce, a person or qualified company may voluntarily enter into a limited managed audit agreement with Revenue pursuant to Title 42 Chapter 2 Article 7. The applicant at its own expense must engage an independent Arizona licensed certified public accountant that is not affiliated with the applicant to conduct the limited managed audit. If the Director of Revenue accepts the findings of the audit and issues a notice of determination pursuant to A.R.S. §42-2303 and the taxpayer timely files its Arizona income tax return with the appropriate forms the credit amount accepted by Revenue is not subject to recapture, disallowance, reduction or denial with respect to either the qualified company or any subsequent transferee (purchaser) of the credit. (A.R.S. §43-1075(E), 43-1075.01(C), 43-1163(E) and 43-1163.01(C))

### **Instructions**

- Companies producing a motion picture please see Sections 7 through 12.
- Companies producing a commercial advertisement or music video please see Sections 13 through 19.
- Applicants constructing an infrastructure project please see Sections 20 through 25.

## Companies producing a motion picture

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### Section 7. Eligibility Requirements for Production of a Motion Picture

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A motion picture production company is eligible for tax incentives upon completion of production and compliance with requirements in A.R.S. §41-1517 if it:

- Is primarily (more than 50%) engaged in the business of producing motion pictures
- Demonstrates it has the lawful right to produce the motion picture
- Has a physical office and bank account in Arizona
- Begins production on the motion picture listed in the initial application within 90 days of pre-approval
- Has a script, except for a television series, commercial advertisement or music video, including a synopsis for the production in the initial application
- Has a budget and proposed director, list of cast and producer for the production in the initial application
- Spends at least \$250,000 in qualifying production costs
- Employs the statutorily required percentage of Arizona residents during the pre-approval period
- Acknowledges each production was filmed in Arizona, except for commercial advertisements or music videos
- Is not obscene, does not depict sexual activity or sexually exploit a minor as provided under A.R.S. §§41-1517(M); 12-811; 13-3501; 13-3551; 13-3552; 13-3553
- Submits a viewable copy of the complete production to Commerce or a letter of credit payable to Revenue
- Submits an Initial Application and receives pre-approval from Commerce
- Submits a Completion Report and receives post-approval from Commerce

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### Section 8. Explanation of Tax Incentives for Production of a Motion Picture

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The Motion Picture Production Tax Incentives program provides the following Arizona tax incentives to companies producing motion pictures that are approved by Commerce.

1. Transaction privilege tax exemption on machinery, equipment and other tangible personal property. Under A.R.S. §§42-5061(B)(23) and 42-5071(B)(2)(b), eligible tangible personal property sold or leased to a qualified motion picture production company and used directly in motion picture production is exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the retailer or lessor at the time of sale or lease.*
2. Transaction privilege tax exemption on job printing, engraving, embossing or copying. Under A.R.S. §42-5066(B)(5), eligible sales to a qualified motion picture production company for job printing, engraving, embossing or copying that will be used directly in motion picture production are exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the retailer at the time of the sale.*
3. Transaction privilege tax exemption on leases or rentals of lodging space. Under A.R.S. §42-5070(C)(2), eligible leases or rentals of lodging space to a qualified motion picture production company is exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the operator of the transient lodging facility at the time of lease or rental.*
4. Transaction privilege tax exemption on catered food, drink and condiments. Under A.R.S. §42-5074(B)(10), eligible sales of catered food, drink and condiments to a qualified motion picture production company are exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the catering business at the time of the purchase.*
5. Transaction privilege tax exemption on construction contracts. Under A.R.S. §42-5075(B)(20) eligible contracts for the construction of any building, or other structure, associated with motion picture production in Arizona are exempt from state and county TPT. *To qualify for the exemption, a qualified company must present a current Revenue issued exemption certificate to the prime contractor at the time the contract is entered into.*
6. Use tax exemption on machinery, equipment and other tangible personal property. Under A.R.S. §42-5159(B)(23), the storage, use or consumption in Arizona of eligible tangible personal property that is used directly in the motion picture production by a qualified motion picture production company is exempt from use tax. *To qualify for the exemption, at the time of purchase the qualified company must present to the retailer a current Revenue issued exemption certificate.*

7. Income tax credits. Under A.R.S. §§43-1075 and 43-1163, for years beginning from and after December 31, 2005, a non-refundable tax credit is allowed for a qualified motion picture production company. These tax credits can be used to offset Arizona tax liability on a dollar for dollar basis. The tax credit is equal to 20% or 30% of the qualifying production costs incurred by a qualified company that are directly attributable to the production of a motion picture in Arizona.

The tax credits for a qualified motion picture production company are equal to:

<u>Credit Amount</u>	<u>Production Costs</u>
20%	\$250,000 - \$1,000,000
30%	More than \$1,000,000

The tax credit must be claimed by a qualified company on an original Arizona tax return along with Form 334 for the next tax year due after post-approval was received but no earlier than the year of the pre-approval. Co-owners of a company (including partners in a partnership, LLC members and shareholders of an S corporation) may each claim a share of the tax credits allowed. The allocation of tax credits among owners is not required to follow ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the company. (A.R.S. §§43-1075(F) and 43-1163(F))

After the qualified company receives post-approval from Commerce, it may use, carry forward, sell or transfer all or part of the tax credits to one or more persons, who may in turn use, carry forward, sell or transfer the tax credits an unlimited number of times. Any transferor who sells or transfers a credit before filing an Arizona income tax return must timely file an Arizona income tax return, and pay any amounts shown on the return as due. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee.

Sale or transfer of tax credits must meet the requirements of A.R.S. §§43-1075(H) and 43-1163(H). The purchaser or transferee can use the credits to offset tax liability for any tax year that is timely filed on an original tax return but no earlier than the pre-approval year and no later than the five year carry forward period. The sale or transfer of tax credits does not extend the five-year carry forward period. The five-year carry forward period begins with the year subsequent to the cap year. If qualification is terminated or revoked, all or part of the tax credits received under this program are subject to recapture under A.R.S. §§43-1075(H) and 43-1163(H). The transferee (purchaser) of the tax credit has recourse only against the transferor (seller), not the State of Arizona. Both the transferor (seller) and transferee (purchaser) must submit written notice of the transaction to Revenue within 30 days after the sale or transfer of tax credits. To download Revenue's forms, visit <http://www.azdor.gov/>

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## **Section 9. Submittal of Initial Applications for Production of a Motion Picture**

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The acceptance process described in this section will determine the priority placement number assigned to initial applications. The priority placement number determines the order in which Commerce allocates that calendar year's cap. Commerce shall only accept original, initial applications via United States Postal Service, private delivery service or hand delivery. Postmarks will be disregarded when determining the date of receipt. Any other form of delivery for an initial application, including emailed or faxed copies will not be accepted by Commerce and will be returned. Commerce shall accept initial applications for a calendar year's cap on or after the first business day of every calendar year. If a calendar year's cap is exhausted by October 31<sup>st</sup> of a year, Commerce can accept applications for the next calendar year's cap beginning November 1<sup>st</sup>. Any initial application for a calendar year's cap received prior to the first business day of the calendar year or prior to November 1<sup>st</sup>, whichever is applicable, will be rejected and the applicant notified. Commerce will date stamp initial applications on the date of receipt and assign a priority placement number as follows. If a single application is received on any day, it will be assigned a priority placement number on the next business day following the date of receipt. If more than one initial application is received on any day, each initial application will be entered into a lottery for that day. The lottery will be held on the next business day following the date of receipt of the initial application.

Any initial application for a calendar year's cap that is not substantially complete will be rejected and the applicant notified, processing will cease and the priority placement number will be voided. If an initial application is returned by Commerce a company may file a revised initial application for the same production or infrastructure project at a later date and receive a new priority placement number.

January 1 will be the effective date for all application received prior to January 1.

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## Section 10. Processing Initial Applications for Production of a Motion Picture

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- A. A company may apply to Commerce for a twenty-four month pre-approval for motion picture production tax incentives on or after the first business day of a calendar year. If a calendar year's cap is exhausted by October 31<sup>st</sup>, Commerce can accept applications on or after November 1<sup>st</sup> of that year for allocations from the next calendar year's cap.

Application can be made by submitting the Commerce form: "Initial Application for Pre-Approval for a Motion Picture Production Company". Initial Applications must be original applications, delivered via United States Postal Service, private delivery service or hand delivery. Facsimile or electronically transferred applications will be returned. A company working on more than one production may have more than one initial application at any given time. Note: pre-approval does not guarantee receipt of tax incentives under this program because pre-approval is issued before Commerce determines final eligibility.

A commercial advertisement or music video production company may submit an application for tax incentives under either this Section or Section 16. of these Program Guidelines. However, applications submitted under this Section are no longer subject to the unique requirements provided by A.R.S. §41-1517(K). Rather, the applicant is subject to the provisions in A.R.S. §41-1517(C).

The Initial Application, according to A.R.S. §41-1517(C), shall include:

1. Name and contact information for the company
  2. Name and contact information of an individual who will maintain records of expenditures in Arizona
  3. The Arizona production office address and phone number
  4. For the production in the initial application:
    - a. Documentation that the applicant has the lawful right to produce the particular production.
    - b. A script and synopsis, except a television series can submit in lieu of a script,
      - i. A synopsis of the general nature of the series
      - ii. A description of the characters and the intended nature of their interaction
      - iii. A description of the locations and sets
      - iv. The intended distribution or broadcast medium with specific television channels, if know
    - c. Name of the proposed director
    - d. Name of the proposed producer
    - e. Preliminary list of cast
    - f. Projected earliest pre-production date and last production date in Arizona
    - g. The estimated total budget of each production
    - h. The estimated total Arizona expenditures of each production NOTE: the amount of total Arizona expenditures may not be increased after the initial application
    - i. The estimated percentage of the total production taking place in Arizona
    - j. The estimated level of employment of Arizona residents in cast and crew
  5. The company must submit to Commerce an affidavit signed by any person who will be credited on screen (except for commercial advertisement or music videos) as the producer(s). Signatures by executive, associate or line producers shall not be accepted. By signing the affidavit the company agrees, but is not limited, to the following:
    - a. To furnish records of expenditures in Arizona to Commerce or Revenue on request
    - b. Use any items purchased with a certification of exemption directly in or associated with motion picture production
    - c. That the information contained in the initial application is true and correct under penalty of perjury
- B. Concurrent with submittal of an initial application to Commerce, a company may request a letter of good standing from Revenue by submitting form "Tax Clearance Application." Submitting the "Tax Clearance Application" at this time will expedite Revenue's approval. A separate tax clearance application must be submitted for each initial application submitted to Commerce. If a company files multiple initial applications for different productions, a separate tax clearance application must be submitted to Revenue for each application. If a separate tax clearance application is not submitted to Revenue and approval received, a company will not receive a letter of good standing for that initial application.
- C. During review of the initial application, Commerce may request additional information, conduct a site visit or discuss the initial application with the company. The company will have fifteen calendar days to supply any additional information requested by Commerce. If the information provided does not complete the application the company will be given one extension of an additional 15 calendar days to supply the requested information. If the

company does not satisfy the request within the allotted timeframe, the application will be considered withdrawn by the company and the priority placement number assigned to the initial application or addendum will be voided.

- D. Commerce shall make a determination with regard to each initial application within 30 days after the date of receipt of a complete initial application.
- E. If Commerce denies pre-approval, the company may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. A production company may appeal this decision; however, the denial of pre-approval prohibits a company from receiving tax exemptions under this program unless the appeal is successful.
- F. If the company is eligible for tax incentives, Commerce shall issue a pre-approval (letter of qualification) and transmit a copy to Revenue for action. Pre-approval is issued to a qualified company for each initial application and is effective for a twenty-four month period. A pre-approval includes an estimated dollar amount and the percentage of calendar year cap allocated, the effective date and the expiration date of the pre-approval, the priority placement number and the production name(s).
- G. When a "Tax Clearance Application" is received by Revenue and Revenue establishes the company's eligibility under its statutes, Revenue will issue a certificate for TPT and use tax exemptions and copy Commerce. Once the company has the exemption certificate, TPT and use tax exemptions can be claimed by providing a copy of the Revenue issued exemption certificate to a vendor at the time of the transaction as discussed in Sections 8 and 14 of this Guideline. If a company files multiple initial applications for different productions, a separate tax clearance application must be submitted to Revenue for each application. If a separate tax clearance application is not submitted to Revenue and approval received, a company will not receive a transaction privilege and use tax exemption certificate for that initial application.

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## **Section 11. Next Steps: During Production of a Motion Picture**

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### **A. Within 90 days After Pre-approval**

A company must begin production and notify Commerce that production has begun on the initial application within ninety days after Commerce issues pre-approval, which Commerce may verify through a site visit. To prove production has begun, and avoid lapse of pre-approval, the company shall provide one of the following:

1. Documentation of its Arizona expenditure of the lesser of:
  - a. Ten percent of the estimated total Arizona budget of the production.
  - b. Two hundred fifty thousand dollars.
2. A completion bond, equal to the estimated total budget of the pre-approved production.

**In addition**, the company must provide one of the following to Commerce within ninety days of pre-approval:

3. A copy of a contract, loan out agreement or deal memo with a cameraman and crew.
4. A copy of the crew call sheet for the first day of production.
5. Evidence that residents of this state have been paid a total of at least five thousand dollars for work on the pre-approved motion picture.
6. A copy of a contract or agreement directly attributable to the pre-approved motion picture.

If the company fails to begin production and notify Commerce, the pre-approval lapses, the application is void, all transaction privilege and use tax exemptions will be recaptured and the pre-approved tax credits will be returned to the calendar year cap from which they came. Further, if a pre-approved motion picture production company fails to begin production, as described above, and also fails to voluntarily relinquish the unused tax credit amounts within the 90 day period, the company and all persons signing the application for pre-approval are disqualified from receiving, or participating in any motion picture production company that applies for or receives, tax incentives for three years after the original application. (A.R.S. 41-1517(Q))

### **B. Qualifying Expenses**

Any expense incurred prior to a pre-approval or subsequent to expiration of a pre-approval will not be considered a qualifying expense, nor will it be counted toward the \$250,000 investment threshold. The \$250,000 investment threshold must be met for each pre-approval, which is based on an initial application. Therefore, a company with two or more initial applications must make a separate \$250,000 investment for each pre-approval.

Only qualifying costs incurred in Arizona that are directly attributable to a production as shown in the initial application can be counted toward the investment threshold. Out-of-state production costs are ineligible even if passed through a third party Arizona company in an effort to make them eligible. It is the responsibility of the pre-

approved production company to ensure that its providers are in compliance with the requirements for qualifying production costs. Prior to issuing post-approval, Commerce will check all or some of the expenses to ensure compliance and will request documentation of the expenses, if necessary.

A qualified company must maintain records of expenditures for each initial application in order to certify costs to Commerce or Revenue upon completion of production. Expenditures shall be reported to Commerce using "Expense Report Forms 1 & 2." Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

C. Employment Levels and Residency

The calendar year of a pre-approval letter dictates the employment percentages that must be met for the pre-approval period. A qualified company or its authorized payroll service company must employ residents of Arizona in its production activities as follows:

1. In 2006, at least twenty-five percent of full-time employees working in the state must be Arizona residents.
2. In 2007, at least thirty-five percent of full-time employees working in the state must be Arizona residents.
3. In 2008 through 2010, at least fifty percent of full-time employees working in the state must be Arizona residents.

To establish residency for a full-time employee, a qualified company or its authorized payroll service company must on the date of hire obtain a "Residency Affidavit" for each Arizona resident involved in production activities in the state. The Residency Affidavit is valid for the entire pre-approval period but can only be used for a single initial application. The company must retain the Residency Affidavits to document the Arizona employment levels for Commerce or in the event of audit by Revenue.

To report employment data to Commerce, a company shall use "Calculation of Arizona Residency Forms 1 & 2." Arizona residency must be expressed as a percentage. To calculate the percentage: divide the total number of hours worked by full-time Arizona residents by the total number of hours worked by full-time employees on the production during the pre-approval period while in Arizona.

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## **Section 12. Processing Completion Reports for Post-Approval of Production of a Motion Picture**

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- A. To maintain eligibility, within thirty days of completion of the production in the initial application, the company must submit a "Completion Report" to Commerce. A production does not need to be released or distributed to be considered complete and to generate tax credits or exemptions.

The Completion Report, according to A.R.S. §41-1517(O) and (P), shall include:

1. Expense Report Forms 1 & 2 for the production in the initial application
  2. Calculation of Arizona Residency Forms 1 & 2 for the twenty-four month pre-approval period
  3. A complete and viewable copy of the production in the initial application. A company can apply for post-approval before a viewable copy is available. However, if the company requests post-approval without a viewable copy, it must submit a letter of credit payable to the Arizona Department of Revenue and equal to the pre-approved tax credit value for that production. Revenue may draw on the letter of credit if Commerce determines that the company did not meet the requirements of A.R.S. §41-1517.
- B. To generate a tax credit and retain TPT and use tax exemptions a company must document compliance with the provisions of A.R.S. §41-1517 and the requirements established in the Program Guidelines.
- C. During review of the completion report, Commerce may request additional information, conduct a site visit or discuss the completion report with the applicant. The applicant will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the completion report will be considered withdrawn by the applicant and the priority placement number assigned to the completion report will be voided.
- D. Commerce shall attempt to make a determination with regard to completion report within 60 days after the date of receipt of a complete report.
- E. If Commerce denies post-approval, the applicant may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10.

- F. If the applicant is eligible for tax incentives, Commerce shall issue post-approval. The post-approval will include the production name, a specific dollar amount and the percentage of tax credits the qualified company may claim. Commerce will review total production costs and recalculate the final amount of tax credits, as needed. The post-approved amount may be less than the pre-approved amount (if costs were less than estimated), but never higher.
- G. The qualified company must claim the tax credits on its original Arizona tax return for the year in which post-approval was received even if the credits were transferred before the return was filed. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee (the purchaser). The transferee can use the credits to offset tax liability for the tax year in which the transaction occurred.

## *Companies producing a commercial advertisement or music video*

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### **Section 13. Eligibility Requirements for Production of a Commercial Advertisement or Music Video**

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A commercial advertisement or music video production company is eligible for tax incentives upon completion of production and compliance with requirements in A.R.S. §41-1517 if it:

- Submits an Initial Application and receives pre-approval from Commerce
- Is primarily (more than 50%) engaged in the business of producing motion pictures, which includes commercial advertisements and music videos
- Demonstrates it has the lawful right to produce the commercial advertisement or music video
- Has a physical business office and bank account in Arizona
- Completes the production(s) listed in the initial application and any added productions within 60 days of submitting each application for pre-approval
- Includes a synopsis or storyboard for the production(s) in the initial application
- Has a budget and proposed director, list of cast and producer for the production in the initial application
- Spends at least \$250,000 in qualifying production costs in one or more productions pre-approved within twelve consecutive months after pre-approval of an initial application
- Employs the statutorily required percentage of Arizona residents.
- Is not obscene, does not depict sexual activity or sexually exploit a minor as provided under A.R.S. §§41-1517(M); 12-811; 13-3501; 13-3551; 13-3552; 13-3553
- Submits a viewable copy of the completed production to Commerce or a letter of credit payable to Revenue
- After meeting investment requirements of \$250,000 the company submits an Acknowledgement of Post Approval or a Completion Report within 30 days of completion of a production and receives post-approval from Commerce

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### **Section 14. Explanation of Tax Incentives for Production of a Commercial Advertisement or Music Video**

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The Motion Picture Production Tax Incentives program provides the following Arizona tax incentives for commercial advertisement or music video production companies that are approved by Commerce.

1. Transaction privilege tax exemption on machinery, equipment and other tangible personal property. Under A.R.S. §§42-5061(B)(23) and 42-5071(B)(2)(b), eligible tangible personal property sold or leased to a qualified motion picture production company and used directly in motion picture production is exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the retailer or lessor at the time of sale or lease.*
2. Transaction privilege tax exemption on job printing, engraving, embossing or copying. Under A.R.S. §42-5066(B)(5), eligible sales to a qualified motion picture production company for job printing, engraving, embossing or copying that will be used directly in motion picture production are exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the retailer at the time of the sale.*
3. Transaction privilege tax exemption on leases or rentals of lodging space. Under A.R.S. §42-5070(C)(2), eligible leases or rentals of lodging space to a qualified motion picture production company is exempt from state and

county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the operator of the transient lodging facility at the time of lease or rental.*

4. Transaction privilege tax exemption on catered food, drink and condiments. Under A.R.S. §42-5074(B)(10), eligible sales of catered food, drink and condiments to a qualified motion picture production company are exempt from state and county TPT. *To qualify for the exemption, the qualified company must present a current Revenue issued exemption certificate to the catering business at the time of the purchase.*
5. Transaction privilege tax exemption on construction contracts. Under A.R.S. §42-5075(B)(20) eligible contracts for the construction of any building, or other structure, associated with motion picture production in Arizona are exempt from state and county TPT. *To qualify for the exemption, a qualified company must present a current Revenue issued exemption certificate to the prime contractor at the time the contract is entered into.*
6. Use tax exemption on machinery, equipment and other tangible personal property. Under A.R.S. §42-5159(B)(23), the storage, use or consumption in Arizona of eligible tangible personal property that is used directly in the motion picture production by a qualified motion picture production company is exempt from use tax. *To qualify for the exemption, at the time of purchase the qualified company must present to the retailer a current Revenue issued exemption certificate.*
7. Income tax credits. Under A.R.S. §§43-1075 and 43-1163, for years beginning from and after January 1, 2008, a non-refundable tax credit is allowed for a production of a commercial advertisement or music video by a qualified motion picture production company from the 5% cap set-aside for such productions. These tax credits can be used to offset Arizona tax liability on a dollar for dollar basis. The tax credit is equal to 20% or 30% of the qualifying production costs incurred by a qualified company that are directly attributable to the production of a motion picture in Arizona.

The tax credits for a qualified motion picture production company are equal to:

<u>Credit Amount</u>	<u>Production Costs</u>
20%	\$250,000 - \$1,000,000
30%	More than \$1,000,000

A commercial advertisement or music video production company may initially qualify for tax credits by applying for pre-approval for one or more projects. The company provides an estimated budget for each project included in the initial application, knowing it must invest at least \$250,000 in the 12 months following pre-approval (41-1517 (K)(8)). The company does not estimate expenses for productions it does not yet have. Commerce reserves an allocation amount based on the assumed investment of \$250,000 in the 12 month investment period (41-1517 (L)). If the initial application exceeds \$250,000 in qualified production costs, the reserved amount of credits may be based on an amount greater than \$250,000. A commercial advertisement or music video, whether submitted in an initial application or subsequently added to the initial application (through submittal of the form "Addendum to an Initial Application"), must be completed and reported to Commerce within 60 days of submittal of the request for pre-approval. Only expenditures relating to a completed production and for completed productions made during the 12-month investment period may be qualified production costs and generate tax credits.

The tax credit must be claimed by a qualified company on an original Arizona tax return along with Form 334 for the next tax year due after post-approval was received but no earlier than the year of the pre-approval. Co-owners of a company (including partners in a partnership, LLC members and shareholders of an S corporation) may each claim a share of the tax credits allowed. The allocation of tax credits among owners is not required to follow ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the company. (A.R.S. §§43-1075(F) and 43-1163(F))

After the qualified company receives post-approval from Commerce, it may use, carry forward, sell or transfer all or part of the tax credits to one or more persons, who may in turn use, carry forward, sell or transfer the tax credits an unlimited number of times. Any transferor who sells or transfers a credit before filing an Arizona income tax return must timely file an Arizona income tax return, and pay any amounts shown on the return as due. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee.

Sale or transfer of tax credits must meet the requirements of A.R.S. §§43-1075(H) and 43-1163(H). The purchaser or transferee can first use the credits to offset tax liability for the tax year in which the transaction occurred. The sale or transfer of tax credits does not extend the five-year carry forward period. The five-year carry forward period begins with the year subsequent to the cap year. If qualification is terminated or revoked, all or part of the tax credits received under this program are subject to recapture under A.R.S. §§43-1075(H) and 43-1163(H). The transferee (purchaser) of the tax credit has recourse only against the transferor (seller), not the

State of Arizona. Both the transferor (seller) and transferee (purchaser) must submit written notice of the transaction to Revenue within 30 days after the sale or transfer of tax credits. To download Revenue's forms, visit <http://www.azdor.gov/>

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## **Section 15. Submittal of Initial Applications for a Commercial Advertisement or Music Video**

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The acceptance process described in this section will determine the priority placement number assigned to initial applications. The priority placement number determines the order in which Commerce allocates that calendar year's cap. Commerce shall accept initial applications for a calendar year's cap on or after the first business day of every calendar year. If a calendar year's set aside is fully allocated, a commercial advertisement or music video production company must wait until the first business day of the next year to submit an initial application. Any initial application for a calendar year's cap received prior to the first business day of the calendar year will be rejected and the applicant notified. Commerce will date stamp initial applications on the date of receipt and assign a priority placement number as follows. If a single application is received on any day, it will be assigned a priority placement number on the next business day following the date of receipt. If more than one initial application is received on any day, each initial application will be entered into a lottery for that day. The lottery will be held on the next business day following the date of receipt of the initial application.

Any initial application for a calendar year's cap that is not substantially complete will be rejected and the applicant notified, processing will cease and the priority placement number will be voided. If an initial application is returned by Commerce a company may file a revised initial application for the same production at a later date and receive a new priority placement number.

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## **Section 16. Processing Initial Applications for a Commercial Advertisement or Music Video Production Company**

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A. A commercial advertisement or music video company may apply to Commerce for a twelve month pre-approval under the unique provisions of A.R.S. §41-1517(K). A commercial advertisement or music video company may apply for pre-approval before the company makes the minimum investment of \$250,000. Applications are accepted by Commerce on or after the first business day of a calendar year. If the 5% set aside is exhausted, Commerce cannot accept applications for the next calendar year's set aside until the first business day of the next calendar year.

Application can be made by submitting the Commerce form: "Initial Application for Pre-Approval for a Commercial Advertisement or Music Video". A company may choose to combine any number of productions under one initial pre-approval as long as it completes each production within 60 days. The 60 days completion may extend beyond the 12 month certification period, however, only expenses made in the 12 month certification period can generate credits. Or a company may choose to receive a separate pre-approval for each production. Note: pre-approval does not guarantee receipt of tax incentives under this program because pre-approval is issued before Commerce determines final eligibility.

A commercial advertisement or music video production company may submit an application for tax incentives under either Section 10. or under this Section of these Program Guidelines. However, applications submitted under Section 10. are no longer subject to the unique requirements provided by A.R.S. §41-1517(K). Rather, the applicant is subject to the provisions in A.R.S. §41-1517(C).

The Initial Application, according to A.R.S. §41-1517(C) and (K), shall include:

1. Name and contact information for the company
2. Name and contact information of an individual who will maintain records of expenditures in Arizona
3. The Arizona production office address and phone number
4. Name of the production(s) and for each production in the initial application
  - a. A synopsis or storyboard that:
    - i. Identifies the product, service, person or event for a commercial advertisement or identifies the artist and song for a music video
    - ii. A description of the general content or message to be conveyed
    - iii. A description of the locations and sets
    - iv. The intended distribution or medium with specific television channels, if know
  - b. Name of the proposed director

- c. Name of the proposed producer
  - d. Preliminary list of cast
  - e. Projected earliest pre-production date and last production date in Arizona
  - f. The estimated total budget of each production
  - g. The estimated total Arizona expenditures of each production
  - h. The estimated percentage of the total production taking place in Arizona
  - i. The estimated level of employment of Arizona residents in cast and crew
5. An affidavit signed by an authorized officer of the company. By signing the affidavit the applicant company agrees, but is not limited, to the following:
- a. To furnish records of expenditures in Arizona to Commerce or Revenue on request
  - b. Use any items purchased with a certification of exemption directly in or associated with motion picture production
  - c. That the information contained in the initial application is true and correct under penalty of perjury
  - d. That the company will submit a viewable copy of the completed production to Commerce or a letter of credit payable to Revenue
- B. Concurrent with submittal of an initial application or addendum to Commerce, a company may request a letter of good standing from Revenue by submitting form "Tax Clearance Application." Submitting the "Tax Clearance Application" at this time will expedite Revenue's approval. A separate tax clearance application must be submitted for each initial application and each addendum submitted to Commerce. If a company files multiple initial applications for different productions, a separate tax clearance application for each must be submitted to Revenue. If a separate tax clearance application for each production is not submitted to Revenue and approval received, a company will not receive a letter of good standing for that initial application or production and will be ineligible for tax incentives.
- C. During review of the initial application or addendum, Commerce may request additional information, conduct a site visit or discuss the initial application with the company. The company will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the initial application will be considered withdrawn by the company. Or if the information provided does not complete the application the company will be given one extension of an additional 15 calendar days to supply the requested information. If the company does not satisfy the request within the allotted timeframe, the application will be considered withdrawn by the company and the priority placement number assigned to the initial application or addendum will be voided.
- D. Commerce shall make a determination with regard to each initial application and each addendum within 15 business days after the date of receipt of a complete initial application or addendum.
- E. If Commerce denies pre-approval, the company may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. A company may appeal this decision; however, the denial of pre-approval also prohibits a company from receiving tax incentives under this program unless the appeal is successful.
- F. If the company is eligible for tax incentives, Commerce shall issue a pre-approval and transmit a copy to Revenue. Pre-approval is issued to a qualified company for each initial application and is effective for a twelve month period. A commercial advertisement or music video production company is not eligible for post approval of tax credits until the company's qualified production costs reach \$250,000 within twelve consecutive months from the date of pre-approval. A pre-approval letter includes the production name(s), the effective date, the expiration date, priority placement number, amount of tax credits reserved (a minimum of \$50,000) and percentage of tax credits, notice that the company is eligible for TPT and use tax exemptions, notice that the company must complete the production(s) identified in the initial application within 60 days and submit a "Interim Report" to Commerce and a reminder that the company must spend \$250,000 within twelve months to maintain eligibility.
- G. When Revenue receives both a pre-approval letter and a "Tax Clearance Application" and establishes the company's eligibility under its statutes, Revenue will issue a certificate for TPT and use tax exemptions and copy Commerce. Once the company has the exemption certificate, the company can obtain TPT and use tax exemptions by providing a copy of the Revenue-issued exemption certificate to a vendor at the time of the transaction as discussed in Sections 8 and 14 of this Guideline.

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## **Section 17. Next Steps for a Commercial Advertisement or Music Video Production Company**

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To maintain eligibility, a commercial advertisement or music video company must complete each production for which it receives pre-approval within 60 calendar days of the date it requested pre-approval. The sixty-day window

to complete production begins the date the application or addendum is submitted to Commerce for a specific production.

If you have completed your production but have not met the \$250,000 minimum threshold then you are required to submit an Interim Report.

**\*If you have completed at least one production, have met the \$250,000 threshold, and do not intend to add any further productions, please go to section 18.**

**\* If you have met the \$250,000 threshold and have completed at least one production but intend to complete more productions then please go to Section C below.**

- A. **INTERIM REPORT:** The Company must submit the form "Interim Report" to Commerce within 30 calendar days of completion of the production. A separate Interim Report must be submitted for each completed production until the \$250,000 threshold is met. When submitting an Interim Report, the company must document the total amount of qualified production costs associated with each production identified in the initial application and/or addendum. The company must also attach a viewable copy of the production that was completed or provide a letter of credit payable to the Arizona Department of Revenue and equal to the pre-approved tax credit value for that production.

After review of an Interim Report, Commerce will acknowledge the total amount of qualified production costs to date under the initial application. Once the company spends \$250,000 on any number of productions that have either been identified in the initial application or added to the application through an addendum, Commerce will notify the company that it is eligible to submit a "Request for Post-Approval of Tax Credits" or a "Completion Report for Post-Approval of Tax Credits".

- B. **ADDENDUM:** At any time during the twelve-month pre-approval period, a commercial advertisement or music video company can add one or more productions to a pre-approved initial application by submitting an "Addendum". Commerce will assign each addendum a unique item number, part of which is the priority placement number assigned to the initial application. The investment amount for all the productions identified with an initial application may be combined to enable the applicant company to meet or exceed the \$250,000 minimum investment amount. However, only the expenses for completed productions incurred within the twelve-month pre-approval period generate tax credits.

If the company submits addenda which result in the qualified production costs exceeding \$250,000 in aggregate for the initial application, Commerce may upwardly adjust the pre-approved credit amount. Any allocation for such adjusted costs must be made from the cap year from which the initial allocation of credits was made. If no credits remain in that cap year, the company may choose to get in line for any returned cap or may submit a new initial application for credits under the next calendar year's cap. If the company submits a new initial application in a new cap year, the productions and expenses in the first application cannot be aggregated with the new initial application.

To add a production to a pre-approved initial application, the company must submit the form "Addendum to Initial Application for Adding a Production to a Pre-Approved Initial Application for a Commercial Advertisement or Music Video" to Commerce. A separate addendum must be submitted for each production being added to an initial application. The addendum shall include:

1. Name and contact information for the company
2. The priority placement number to which the production is being added
3. For the production in the addendum:
  - a. Name of the production
  - b. For each production, a synopsis or storyboard that:
    - i. Identifies the product, service, person or event for a commercial advertisement or identifies the artist and song for a music video
    - ii. A description of the general content or message to be conveyed
    - iii. A description of the locations and sets
    - iv. The intended distribution or medium with specific television channels, if know
  - c. Name of the proposed director
  - d. Name of the proposed producer
  - e. Preliminary list of cast
  - f. Projected earliest pre-production date and last production date in Arizona
  - g. The estimated total budget of each production
  - h. The estimated total Arizona expenditures of each production
  - i. The estimated percentage of the total production taking place in Arizona
  - j. The estimated level of employment of Arizona residents in cast and crew

4. An affidavit signed by an authorized officer of the company. By signing the affidavit the applicant company agrees, but is not limited, to the following:
  - a. To furnish records of expenditures in Arizona to Commerce or Revenue on request
  - b. Use any items purchased with a certification of exemption directly in or associated with motion picture production
  - c. That the information contained in the addendum is true and correct under penalty of perjury
  - d. That the company will submit a viewable copy of the completed production to Commerce or a letter of credit payable to Revenue

During review of an addendum, Commerce may request additional information, conduct a site visit or discuss the initial application with the company. The company will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the addendum will be considered withdrawn by the company. Or if the information provided does not complete the application the company will be given one extension of an additional 15 calendar days to supply the requested information. If the company does not satisfy the request within the allotted timeframe, the addendum will be considered withdrawn.

Commerce shall make a determination with regard to each addendum within 15 business days after the date of receipt of a complete addendum.

If Commerce denies pre-approval, the company may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. A company may appeal this decision; however, the denial of pre-approval also prohibits a company from receiving tax incentives under this program unless the appeal is successful.

If the company is eligible for tax incentives for the production in an addendum, Commerce shall issue a revised pre-approval and transmit a copy to Revenue. The revised pre-approval letter includes the production name(s), the established effective date, the expiration date, priority placement number and unique item number, amount of tax credits reserved (a minimum of \$50,000) and percentage of tax credits, notice that the company is eligible for TPT and use tax exemptions, notice that the company must complete the production identified in the addendum within 60 days and a reminder that the company must spend \$250,000 within twelve months to maintain eligibility.

**C. Request for Post-Approval of Tax Credits:**

The commercial advertisement or Music Video Production Company is not eligible for an allocation of tax credits until the company's qualified production costs reach \$250,000 in the twelve consecutive months during pre-approval. The production company may either request tax credits upon reaching the \$250,000 threshold and having completed at least one production at anytime during the 12 month certification period or wait until the end of the 12 month certification period when all productions are completed.

If the production company chooses to request tax credits prior to the end of the 12 month certification period and all requirements have been met, the production company shall submit the form "Request for Post Approval of Tax Credits" to Commerce. The form shall include:

1. Name and contact information for the company
2. For each production in the request:
  - a.) Name of production(s)
  - b.) A synopsis or storyboard
  - c.) Name of the Director
  - d.) Name of Producer
  - e.) List of Cast
  - f.) Production dates in Arizona
  - g.) Total budget of each production
  - h.) Total Arizona expenditures of each production
  - i.) The total percentage of production taking place in Arizona
  - j.) Level of employment in Arizona for cast and crew
3. An Affidavit signed by an authorized officer of the company. By signing the affidavit the company agrees, but is not limited to the following:
  - a.) To furnish records of expenditures in Arizona to Commerce or Revenue upon request

- b.) Use any items purchased with a certification of exemption directly in or associated with motion picture production
  - c.) That the information contained in the Request for Post-Approval of Tax Credits is true and correct under penalty of perjury
  - d.) That the company will submit a viewable copy of the production to Commerce or a letter of credit payable to Revenue.
- D. If a production is not completed within 60 calendar days of request for pre-approval and the company has no other pre-approved productions under that initial application, the priority placement number assigned to the initial application is void, any tax exemptions received may be recaptured by the Arizona Department of Revenue and the reserved tax credits revert back to the 5% set aside for allocation to another company. The commercial advertisement or Music Video Production Company can later file a new initial application for a separate production and receive a new priority placement number to reserve cap and claim tax exemptions.

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### **Section 18. Processing Acknowledgement of Eligibility for Post Approval and Completion Reports for a Commercial Advertisement or Music Video**

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- A. Once the \$250,000 investment threshold has been met and at least one production is completed, the company may apply for post-approval of tax credits by submitting an "Acknowledgement of Post-Approval" or "Completion Report" form to Commerce. These reports must be submitted within 30 days of completion of the production. These reports for post-approval can be submitted no more often than once a calendar month. A production does not need to be released or distributed to be considered complete and to generate tax credits or exemptions. However, to generate a tax credit and retain TPT and use tax exemptions a company must document compliance with the provisions of A.R.S. §41-1517 and the requirements established in the Program Guidelines.

The acknowledgement for post-approval and the completion report can be submitted for any number of productions that have been completed by the company that were pre-approved under one priority placement number. Only qualified expenses related to a completed production can generate a post-approval of tax credits. According to A.R.S. §41-1517(O) and (P) the last Completion Report submitted for a pre-approval period must include:

1. Expense Report Forms 1 & 2 for the production in the initial application
2. Calculation of Arizona Residency Forms 1 & 2. A motion picture production company has to employ 50% AZ residents during 12 month certification period.
3. A complete and viewable copy of the production in the initial application or addenda. A company can apply for post-approval before a viewable copy is available. However, if the company requests post-approval without a viewable copy, it must submit a letter of credit payable to the Arizona Department of Revenue and equal to the pre-approved tax credit value for that production. Revenue may draw on the letter of credit if Commerce determines that the company did not meet the requirements of A.R.S. §41-1517.

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### **Section 19. Processing Acknowledgement for Post-Approval and Completion Reports for Post Approval of Tax Credits**

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- A. The commercial advertisement or Music Video Production Company is not eligible for an allocation of tax credits until the company's qualified production costs reach \$250,000 in twelve consecutive months from the date of pre-approval. The company can combine the expenses of multiple productions to meet the \$250,000 investment threshold. Only the expenses incurred within the twelve-month pre-approval period generate tax credits. Tax credit allocations will be issued at 20% of the investment amount until the commercial advertisement or Music Video Production Company combines enough productions so that its investment amount exceeds \$1,000,000. Once the investment amount exceeds \$1,000,000, Commerce will issue the company a revised tax credit allocation at 30%, provided there are sufficient tax credits to satisfy the request in the 5% set aside in the cap year from which the initial application was pre-approved.

- B. During review of the acknowledgement for post-approval and the completion report, Commerce may request additional information, conduct a site visit or discuss the reports with the applicant. The applicant will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the completion report will be considered withdrawn by the applicant and the priority placement number assigned to the initial application will be voided. Or if the information provided does not complete the application the company will be given one extension of an additional 15 calendar days to supply the requested information. If the company does not satisfy the request within the allotted timeframe, the addendum will be considered withdrawn.
- C. Commerce shall attempt to make a determination with regard to the completion report within 60 days after the date of receipt.
- D. If Commerce denies post-approval, the applicant may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10.
- E. If the applicant is eligible for tax incentives, Commerce shall issue a post-approval and transmit a copy to Revenue. Post-approval is issued to a qualified company for each eligible production identified in the reports. Commerce will review total production costs, determine the total qualified costs and recalculate the final amount of tax credits. The post-approved amount may be less than the pre-approved amount (if costs were less than estimated). The only way the post-approved amount can be higher than the pre-approved amount is if the company successfully completed productions that were added to the initial application and if sufficient credits remain in the cap for the year the initial application was pre-approved. A post-approval includes the production name(s), a dollar amount of tax credits, the percentage used to calculate the calendar year cap allocation, the effective date and the expiration date, the priority placement number and unique item number and a notice to Revenue that the company may retain TPT and use tax exemptions.
- F. The qualified company must claim the tax credits on its original Arizona tax return for the next year due after post-approval was received but no earlier than the year of the pre-approval even if the credits were transferred before the return was filed. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee (the purchaser). The transferee can use the credits to offset tax liability for the tax year in which the transaction occurred.

## ***Infrastructure Applicants***

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### **Section 20. Eligibility Requirements for Construction of an Infrastructure Project**

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A person or a qualified company is eligible for tax credits upon completion of the infrastructure project and compliance with requirements in A.R.S. §41-1517.01 if:

1. It constructs an eligible infrastructure project
2. The facility is owned and operated by the applicant
3. It submits a Completion Report to Commerce when the project is finished
4. The Arizona project expenditures for a soundstage must meet the following investment schedule:
  - a. At least \$250,000 within 90 days of pre-approval,
  - b. An additional \$1 million within 12 months of pre-approval,
  - c. A total of \$5 million within 36 months of pre-approval; or
5. The Arizona project expenditures for a support and augmentation facility must meet the following investment schedule:
  - a. At least \$250,000 within 90 days of pre-approval,
  - b. A total of \$1 million within 36 months of pre-approval.
6. Submits an Initial Application and receives pre-approval from Commerce
7. Submits a Completion Report and receives post-approval from Commerce

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### **Section 21. Explanation of Infrastructure Tax Credits**

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The Motion Picture Production Tax Incentives program provides an Arizona tax credits to persons and companies approved by Commerce for construction of an eligible infrastructure project.

Beginning October 31, 2007 through December 31, 2010, under A.R.S. §§43-1075.01 and 43-1163.01, a non-refundable tax credit is allowed for a person or qualified company. These tax credits can be used to offset Arizona tax liability on a dollar for dollar basis. The tax credit is up to 15% of the base investment amount spent by the applicant that is directly attributable to the construction of a qualified infrastructure project in Arizona.

The tax credit must be claimed by a person or a qualified company on an original Arizona tax return along with Form 334 for the tax year in which post-approval was received. Co-owners of a company (including partners in a partnership, LLC members and shareholders of an S corporation) may each claim a share of the tax credits allowed. The allocation of tax credits among owners is not required to follow ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the company. (A.R.S. §§43-1075.01(D) and 43-1163.01(D))

After the person or qualified company receives post-approval from Commerce, it may use, carry forward, sell or transfer all or part of the tax credits to one or more persons, who may in turn use, carry forward, sell or transfer the tax credits an unlimited number of times. Any transferor who sells or transfers a credit before filing an Arizona income tax return must timely file an Arizona income tax return, and pay any amounts shown on the return as due. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee.

Sale or transfer of tax credits must meet the requirements of A.R.S. §§43-1075.01(F) and 43-1163.01(F). The purchaser or transferee can use the credits to offset tax liability for the tax year in which the transaction occurred. The sale or transfer of tax credits does not extend the five-year carry forward period. The five-year carry forward period begins the year the person or qualified company originally earned the tax credits. If qualification is terminated or revoked, all or part of the tax credits received under this program are subject to recapture. Further, a penalty equal to 4.5% of the credit amount may be assessed per month. (A.R.S. §41-1517.01(H)) The transferee (purchaser) of the tax credit has recourse only against the transferor (seller), not the State of Arizona. Both the transferor (seller) and transferee (purchaser) must submit written notice of the transaction to Revenue within 30 days after the sale or transfer of tax credits. To download Revenue's forms, visit <http://www.azdor.gov/>

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## **Section 22. Submittal of Initial Applications for Construction of an Infrastructure Project**

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The acceptance process described in this section will determine the priority placement number assigned to initial applications. The priority placement number determines the order in which Commerce allocates that calendar year's cap. Commerce shall accept initial applications for a calendar year's cap on or after the first business day of every calendar year. If a calendar year's cap is exhausted by October 31<sup>st</sup> of a year, Commerce can accept applications for the next calendar year's cap beginning November 1<sup>st</sup>. Any initial application for a calendar year's cap received prior to the first business day of the calendar year or prior to November 1<sup>st</sup>, whichever is applicable, will be rejected and the applicant notified. Commerce will date stamp initial applications on the date of receipt and assign a priority placement number as follows. If a single application is received on any day, it will be assigned a priority placement number on the next business day following the date of receipt. If more than one initial application is received on any day, each initial application will be entered into a lottery for that day. The lottery will be held on the next business day following the date of receipt of the initial application.

Any initial application for a calendar year's cap that is not substantially complete will be rejected and the applicant notified, processing will cease and the priority placement number will be voided. If an initial application is returned by Commerce a company may file a revised initial application for the same production or infrastructure project at a later date and receive a new priority placement number.

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## **Section 23. Processing Initial Applications for Construction of an Infrastructure Project**

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- A. A person or qualified company may apply to Commerce for pre-approval for infrastructure tax credits under the unique provisions of A.R.S. §41-1517.01(A). Applications for infrastructure tax credits are accepted on or after the first business day of a calendar year. If a calendar year's cap is exhausted by October 31<sup>st</sup>, Commerce can accept applications on or after November 1<sup>st</sup> of that year for allocations from the next calendar year's cap.

Application can be made by submitting the Commerce form: "Initial Application for Construction of an Infrastructure Project". A person or qualified company working on more than one project may have more than one initial application at any given time. Note: pre-approval does not guarantee receipt of tax credit under this program because pre-approval is issued before Commerce determines final eligibility.

The Initial Application, according to A.R.S. §41-1517.01(A), shall include:

1. Name and contact information for the applicant
2. A detailed description of the infrastructure project
3. A preliminary budget
4. An outline of how the project meets the program requirements
5. The projected start and completion dates
6. The name and contact information for the prime contractor, if known

7. A copy of the construction contract, if available
  8. The applicant must submit to Commerce an affidavit signed by an executive representing the applicant, in which the applicant agrees, but is not limited, to the following:
    - a. To furnish records of expenditures on infrastructure projects in Arizona to Commerce on request
    - b. Any items included in the base investment amount are intended for use by the applicant directly in the infrastructure project
    - c. That the information contained in the initial application is true and correct under penalty of perjury
- B. During review of the initial application, Commerce may request additional information, conduct a site visit or discuss the initial application with the applicant. The applicant will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the initial application will be considered withdrawn by the applicant and the priority placement number assigned to the initial application will be voided.
- C. Commerce shall make a determination with regard to each initial application within 30 days after the date of receipt of a complete initial application.
- D. If Commerce denies pre-approval, the applicant may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10.
- E. If the applicant is eligible for infrastructure tax credits, Commerce shall issue a pre-approval and transmit a copy to Revenue. Pre-approval is issued to a person or qualified company for each initial application. A pre-approval includes an estimated dollar amount and the percentage of calendar year cap allocated, the effective date and the expiration date of the pre-approval, the priority placement number and a description of the infrastructure project.

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#### **Section 24. Next Steps: During Construction of an Infrastructure Project**

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- A. A person or qualified company must begin construction and notify Commerce that construction has begun on the initial application within ninety days after Commerce issues pre-approval, which Commerce may verify through a site visit. To prove construction has begun, and avoid lapse of pre-approval, the applicant shall provide one of the following:
1. Its Arizona expenditure of the lesser of:
    - a. Ten percent of the estimated total base investment amount.
    - b. Two hundred fifty thousand dollars, or
  2. A surety bond, equal to the estimated total base investment amount of the project.
- B. To avoid lapse of pre-approval, a person or qualified company constructing a soundstage, must within twelve months of the date of pre-approval provide Commerce with:
1. Documentation that is has spent at least \$1,250,000 on project costs, or
  2. A surety bond equal to the estimated total base investment amount of the project.
- C. To maintain eligibility, a person or qualified company constructing a soundstage, must within thirty-six months of the date of pre-approval provide Commerce with documentation that is has spent a total of at least \$5 million dollars on project costs.
- D. To maintain eligibility, a person or qualified company constructing a support and augmentation facility must within thirty-six months of the date of pre-approval provide documentation to Commerce that it has spent at total of at least \$1 million dollars on the project.

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#### **Section 25. Processing Completion Reports for Construction of an Infrastructure Project**

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- A. To maintain eligibility, within thirty days of completion of an infrastructure project, the applicant must submit a "Completion Report" to Commerce. The Completion Report shall include, but is not limited to, documentation of the infrastructure project expenditures. The company must also document compliance with the provisions of A.R.S. §41-1517.01 and the requirements established in the Program Guidelines.
- B. During review of the completion report, Commerce may request additional information, conduct a site visit or discuss the completion report with the applicant. The applicant will have fifteen calendar days to supply any additional information requested by Commerce. If the information is not timely submitted to Commerce the completion report will be considered withdrawn by the applicant and the priority placement number assigned to the completion report will be voided.

- C. Commerce shall attempt to make a determination with regard to the completion report within 60 days after the date of receipt of a complete report.
- D. If Commerce denies post-approval, the applicant may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10.
- E. If the applicant is eligible for infrastructure tax credits, Commerce shall issue a post-approval and transmit a copy to Revenue. The post-approval will include the infrastructure project name, a specific dollar amount and the percentage of tax credits the individual or qualified company may claim. Commerce will review total project costs and recalculate the final amount of tax credits, as needed. The post-approved amount may be less than the pre-approved amount (if costs were less than estimated), but never higher.
- F. The person or qualified company must claim the tax credits on its original Arizona tax return for the year in which post-approval was received even if the credits were transferred before the return was filed. If the return is not timely filed or the amount shown on the return is not timely paid, Revenue may deny the credit of the transferee (purchaser). The transferee can use the credits to offset tax liability for the tax year in which the transaction occurred.
- G. To avoid disqualification from the program, an applicant for an infrastructure project must submit an "Annual Report" to Commerce within eighteen months of post-approval. The Annual Report must include, according to A.R.S. 41-1517.01(G), but is not limited to,
  - 1. A list of activities and productions conducted at the project in the twelve months following post-approval.
  - 2. The amount of any additional capital investment.
  - 3. Any changes to or improvements made to the project since the date of post-approval.